

Application No. 10/620,102

December 3, 2004

Amendment responsive to Office Action of September 3, 2004

### **Remarks**

#### **I. Prosecution History**

Claims 1-28 were filed in the present application. All pending Claims 1 – 28 stand rejected by the Examiner. Claims 1-18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,901,697 to Oliver, Jr. et al ("*Oliver*") in view of U.S. Patent No. 6,006,743 to Shimek et al. ("*Shimek*"), and claims 19-27 and 29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Oliver* in view of *Shimek* as applied to claims 1-18 and 28, and further in view of U.S. Patent No. 3,027,888 to Fault et al. ("*Fault*").

In response to the Office action, Applicant has amended Claims 1-29. Claims 1-29 remain pending and are presented for further examination.

#### **II. Summary of Embodiment**

In accordance with the preferred embodiment, an artificial campfire is adapted for use with pressurized or compressed gas such as propane and for deployment as a replacement to coal and wood as fuel typically used for fire contained within physical campground facilities. Applicant describes and claims a portable artificial campfire device which operates only on pressurized or compressed gas is portable and can be formed for use in existing campground facilities such as pre-fabricated campfire rings and manmade campfire rings. Applicant's portable artificial campfire device includes a burner element that is spiral shaped, adjustable and has a plurality of orifices of varying density dispersed throughout the surface of the burner element. The burner element can be formed for easy adaptation to and use with existing campfire rings because of its flexibility.

A plurality of orifices densely formed in areas of the burner element that can be referred to as a hot area. A hot area is ideally suited to enable cooking

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over the burner element. Other areas of the burner element wherein orifices are not as densely formed as orifices in the hot area are merely provided for the production of aesthetic flames emanating from the burner element. The orifices formed in the burner element are formed so that they are generally facing in an upwardly direction from the burner element, away from the ground or earth where it would lie when deployed.

**III. Rejection of Claims 1-18 and 28 under 35 U.S.C. 103(a) as unpatentable over Oliver in view of Shimek.**

Claims 1-18 and 28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,901,697 to Oliver, Jr. et al ("*Oliver*") in view of U.S. Patent No. 6,006,743 to Shimek et al. ("*Shimek*").

**Requirements for *Prima Facie* Obviousness**

The obligation of the examiner to go forward and produce reasoning and evidence in support of obviousness is clearly defined at M.P.E.P. §2142:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

M.P.E.P. §2143 sets out the three basic criteria that a patent examiner must satisfy to establish a *prima facie* case of obviousness:

1. some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;
2. a reasonable expectation of success; and

3. the teaching or suggestion of all the claim limitations by the prior art reference (or references when combined).

It follows that in the absence of such a *prima facie* showing of obviousness by the examiner (assuming there are no objections or other grounds for rejection), an applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443 (Fed. Cir. 1992). Thus, in order to support an obviousness rejection, the Examiner is obliged to produce evidence compelling a conclusion that each of the three aforementioned basic criteria has been met.

Campfires built within manmade fire pits, or rock campfire rings, have historically been the fire of choice used by campers to provide outdoor heat, a cooking source and the pleasant appearance only an evening campfire can provide for campers to gather around at the end of the day. Unfortunately, such campfires pose one of the highest risks of causing a forest fire, mostly because active timbers or coals are left behind after the camping trip is over. Portable devices that utilize wood, charcoal, or compressed gas in combination with other fuel sources such as wood and charcoal also present an elevated risk of causing forest fires in campground settings because of the use of combustible material that is generally left behind at campground facilities where rekindling of a fire can occur even if campers do act diligently to active fuel before leaving the facilities.

*Oliver* was disclosed by Applicant to the USPTO in the background section of his patent application and was distinguished for its excessive use of hardware to accomplish a portable artificial campfire. Self-contained devices such as that described in *Oliver* use compressed gas, such as bottled propane, can be used as cooking devices in the great outdoors. Portable barbeques or cook stoves, however, fail to offer campers, hikers and outdoor enthusiast the

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campfire experience. Although *Oliver* describes an artificial campfire device that can operate on pressurized gas, it still presents a system consisting of several components (e.g., a base receptacle, logs, a fuel tank, and a burner member) that add weight and space requirements to a camper's payload. An artificial system such as that described by *Oliver* would not likely be used by most backpackers or hikers whom already have a number of necessary provisions that must be physically transported on their backs during an outdoor adventure.

*Oliver* also describes shortfalls of the prior art being that the prior art devices do not utilize artificial or refractory logs, are typically permanent installations and are not easily adaptable for outdoor use. *Oliver*, therefore, teaches away from Applicant's invention, which does not depend on refractory logs and is designed for use in existing installations.

*Shimek* also describes a gas burner unit that describes the need of more than a burner element for it use. *Shimek* hardware includes a base unit and a top ceramic fiber unit. The manifold has a three dimensional contoured surface. A pattern of burner jets extend through the ceramic fiber top into a gas manifold to create a gas flame pattern. *Shimek*, therefore, also teaches away from Applicant's invention.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the applicant's disclosure. The Applicant respectfully asserts that the rejection of Claims 1-18 and 28 fails under the first prong of the obviousness test because, in view of the objectives and teachings of the references, there is no motivation or suggestion to combine them to arrive at a portable artificial campfire device which operates only on pressurized or compressed gas, is portable and can be formed for use in existing campground facilities such as pre-fabricated campfire

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rings and manmade campfire rings. Furthermore, *Oliver* and *Shimek* fail to teach every element of the claimed invention in claims 1-29, which have been amended by Applicant. Neither *Oliver* nor *Shimek* teach a spiral shaped, adjustable burner element. Neither *Oliver* nor *Shimek* teach a spiral shaped, adjustable burner element that has a plurality of orifices of varying density dispersed throughout the surface of the burner element. Therefore parts I and III of the three basic criteria that a patent examiner must satisfy to establish a *prima facie* case of obviousness are not satisfied under the rejection. Applicant therefore, traverses the rejection in light of his remarks and respectfully requests reconsideration of claims 1-18 and 28.

**III. Rejection of Claims 19-27 and 29 under 35 U.S.C. 103(a) as unpatentable over Oliver in view of Shimek, and further in view of Fault.**

Claims 18-27 and 29 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,901,697 to Oliver, Jr. et al ("*Oliver*") in view of U.S. Patent No. 6,006,743 to Shimek et al. ("*Shimek*"), and further in view of U.S. Patent No. 3,027,888 to Fault et al. ("*Fault*"). *Fault* was cited for teaching a burner element formed as a spirally wound tube. The Examiner states that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the burner element of *Oliver* to be spiral shaped as taught by *Fault*.

As previously discussed with regards to *Oliver* and *Shimek*, *Oliver* and *Shimek* teaches away from Applicant's invention because they require more hardware than Applicants invention, and *Oliver* specifically minimizes any system that does not depend on refractory logs and is used in typically permanent installations.

*Fault* teaches a spiral shaped burner element, but does not teach that the burner element is adjustable as claimed by Applicant, and has a plurality of orifices of varying density dispersed throughout the surface of the burner element. The *Fault* burner element can be formed for easy adaptation to and use with existing facilities, e.g., campfire rings, because of its lack of flexibility.

The Applicant respectfully asserts that the rejection of claims 18-27 and 29 fails under the first prong of the obviousness test because, in view of the objectives and teachings of the references including *Fault*, there is no motivation or suggestion to combine them to arrive at a portable artificial campfire device which operates only on pressurized or compressed gas, is portable and has a spiral shaped burner element that can be formed for use in existing campground facilities such as pre-fabricated campfire rings and manmade campfire rings. Furthermore, *Oliver* and *Shimek* and *Fault* fail to teach every element of the claimed invention. Neither *Oliver* or *Shimek* and *Fault* teach a spiral shaped, adjustable that has a plurality of orifices of varying density dispersed throughout the surface of the adjustable spiral shaped burner element. Therefore parts I and III of the three basic criteria that a patent examiner must satisfy to establish a *prima facie* case of obviousness are not satisfied under the rejection. Applicant therefore, traverses the rejection in light of his remarks and respectfully requests reconsideration of claims 1-18 and 28.

#### **IV. Conclusion**

In view of the foregoing remarks, the Applicant submits that Claims 1-29 are patentably distinct over the references and are in allowable form. Accordingly, the Applicant earnestly solicit the favorable consideration of their application, and respectfully request that it be passed to issue in its present condition.

Should the Examiner discern any remaining impediment to the prompt

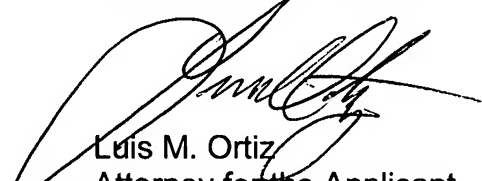
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allowance of the aforementioned claims that might be resolved or overcome with the aid a telephone conference, he is cordially invited to call the undersigned at the telephone number set out below.

Respectfully submitted,



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